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Washington, DC 2005-1503

In re Application of
Martin

Application No. 10/070,279

Patent No. 6,960,588

Filed: March 6, 2002

Attorney Docket 24903

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: DECISION DISMISSING PETITION
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This decision is in response to Applicants' "APPLICATION FOR PATENT TERM ADJUSTMENT" filed on November 28, 2005 requesting that the Office adjust the PTA determination at the time of the mailing of the notice of issuance from a determination of 190 days to a determination of three hundred and fifty-two (352) days.

Applicants application for PTA is **DISMISSED**. Applicants are given **thirty** days to respond to this decision. No extensions of time will be granted under 37 CFR 1.136. Any response should be directed to Mail Stop Petitions.

Applicants assert that the Office erred in granting applicant only 78 days for failing to issue the application within three years of the filing date. Applicants assert that the proper amount of time in not issuing the application within three years is two hundred and forty days. Applicants assert that the proper amount of overall PTA is three hundred and fifty two days.

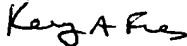
A review of the file reflects that applicants' arguments are not persuasive. Applicant is reminded that if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004).

Accordingly, the two hundred and forty days allotted under 1.702(b) is greater than the amount of time granted for missing the requirements of 37 CFR 1.702(a)(1) and 1.702(a)(4) by 78 days. Hence, the Office enters 78 days into the PALM entry titled PTA 36 months to provide the correct amount of PTA.

After the mailing of this decision, the application will remain in the Office of Patent Legal Administration for any response to this decision. After the time period has elapsed, the Office will return this file to the file repository.

The Office has assessed the \$200.00 fee pursuant to 37 CFR 1.18(e). No additional fees are required in determining this petition.

Telephone inquiries specific to this matter should be directed TO Kery Fries, Senior Legal Advisor, Office of Patent Legal Administration, at (571) 272-7757.



Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

cc: Pair calculation